A.F.R.

-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.3928/2000

CORAM: Hon'ble Shri **S.R.Nayak**, Chief Justice &
Hon'ble Shri **Dilip Raosaheb Deshmukh**, J.

PETITIONERS : Bhagwat Prasad Yadav, S/o Late Shri Hanuwa Prasad Yadav, Aged about 30 years, Class IV employee I.T.I. Koni, Bilaspur M.P., R/o Village Dhabaha P.O. Khadwa Bani The. Mungeli, Dist-Bilaspur.

V/s

RESPONDENTS :
1. State of Chhattisgarh through Secretary, Jan Shakti Niyozan, Mantralaya, D.K.S.Bhawan Raipur (C.G.)
2. Director, Directorate of Employee and Trainee, Mahila Polytechnic Bairan Bajar, Raipur (C.G.)
3. Joint Directore, Industrial Trainee, Bilaspur. Area Bilaspur.
4. Principal, Model Industrial Training Institute - Koni, Bilaspur

Shri R.S.Patel, Counsel for the petitioner.
Shri Vinay Harit, Dy.A.G. for the State.

ORAL ORDER
(Passed on 18.4.2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

The petitioner was appointed as a Class-IV employee under the State initially on 24.7.1993 on daily wage basis after calling for names from Employment Exchange concerned. Although the petitioner was appointed initially for a period of 89 days, his services were continued from time to time till 2.6.1998. On 2.6.1998, the petitioner's services were regularized vide order Annexure P-1 and he was given regular pay-scale of Rs.750-945/-. When the matter stood thus, his services were terminated by respondent No.4 on 15.2.2000 vide Annexure P/3 on the basis of a Circular issued by the Government of the undivided State of Madhya Pradesh. Being aggrieved by the termination order

dated 15.2.2000, the petitioner instituted O.A.No.204/2000 before the State Administrative Tribunal, Raipur Bench, Raipur (for short 'the Tribunal'). The Tribunal by its order dated 6.3.2000 (Annexure P/5) held that it has no jurisdiction to try the petition and accordingly returned the same with a direction to file the same before the appropriate forum. Thereafter, the petitioner has filed this Writ Petition under Article 226/227 of Constitution of India questioning the validity of the action of the respondents.

2. We have heard the learned counsel for the parties. It was contended by the learned counsel for the petitioner that the fourth respondent acted illegally in terminating the services of the petitioner on the basis of the Circular of the Government because, that Circular has no application to the case of the petitioner. It was pointed out that well before the Government issued the Circular, the petitioner's services were regularized on 2.6.1998 itself and he was given a regular pay-scale of Rs.750-945. Learned Deputy Advocate General, appearing for the respondents while supporting the impugned action of the respondents would contend that since the respondents found that regularization of the services of the petitioner done on 2.6.1998 is found to be irregular and illegal, his services were terminated, and therefore, no exception could be taken to the impugned action of the fourth respondent.

3. We are of the considered opinion that the Circular of the Government has no application to the case of the petitioner. It is true that a direction was issued by the Government to terminate the services of all daily-wagers appointed after 31.12.1988. But, for the regularization of the services of the petitioner with effect from 2.6.1998, the above Circular could have been applied to the case of the petitioner also. It needs to be noticed that before the Circular was issued, the petitioner's services were regularized with effect from 2.6.1998 granting him regular pay-scale also. It is trite to state that regularization of services created a vested right in the

petitioner to continue in the service subject to terms and conditions of Rules governing the service. Therefore, the 4th respondent merely on the basis of Circular ought not to have terminated the services of the petitioner. Secondly, it needs to be noticed that if it was the case of the respondents that the regularization of the services of the petitioner w.e.f. 2.6.1998 was irregular or illegal, in that event the petitioner should have been notified about the same and he should have been given a reasonable opportunity to have a say in the matter and only after conducting required enquiry, the 4th respondent ought to have terminated the services of the petitioner. It is not the case of the respondents that such a procedure was followed in the instant case before terminating the services of the petitioner. In that view of the matter, the impugned action on the part of the respondents in terminating the services of the petitioner on the basis of the Circular cannot be sustained for utter violation of principles of natural justice, fair play in action. The cardinal principle that the affected should be appraised is totally violated by the respondents/State authorities.

4. The writ petition is, therefore, allowed. The respondents are directed to reinstate the petitioner into service with continuity of service and full back wages, all attendant benefits, pecuniary or otherwise. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice

Anjani